



SEXUAL ASSAULT JUDICIAL BENCHCARD

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- The recording is both visual and oral;
- Interview was recorded on one recording and is unaltered;
- Every voice heard on the video is properly identified.

Other Considerations:

- The video recording would be discoverable.
- The court shall make specific findings of fact.
- The court shall enter a protective order to restrict the video recording from further disclosure.
- The recording may not become a public record in any legal proceeding.

V. ORDERS OF PROTECTION & THE SEXUAL ASSAULT VICTIM T.C.A. § 36-3-601 (10)

- Sexual assault victims may file for orders of protection.
- No conviction required.
- No relationship requirement.

Note: When adjudicating a sexual assault crime, ask whether there is an order of protection in place for the victim.

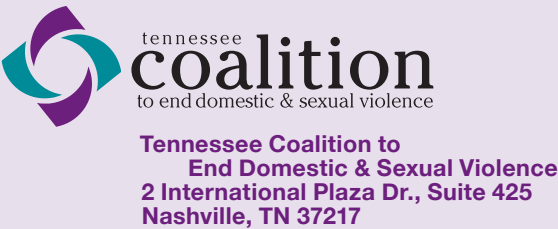
VI. SPECIAL CONSIDERATIONS FOR VICTIMS OF SEXUAL ASSAULT

- **Victim’s Compensation:** The Criminal Injuries Compensation Program provides financial help to victims of crime who sustain bodily injury or death, who report to the authorities and cooperate with the police. Sexual assault victims may receive benefits for pain and suffering. (T.C.A. § 29-13-106) There is a one-year filing deadline, which may be extended in the case of minors or for good cause. (T.C.A. § 29-13-108)

- **Forensic Medical Examinations:** A victim of a sexually oriented crime shall be entitled to a forensic medical examination without charge to the victim. All claims for forensic medical exams are eligible for payment from the Tennessee Criminal Injuries Compensation Fund. The victim shall not be required to report the incident to law enforcement or to cooperate with the prosecution of the case to be eligible for payment of the forensic medical examination. (T.C.A. § 29-13-118)
- **Reporting Requirements:** There is a reporting requirement for known or suspected child sexual abuse. (T.C.A. § 37-1-605)
- There is a reporting requirement for suspected or known sexual abuse of “vulnerable” adults. (T.C.A. § 71-6-103)
- Healthcare providers are not required to report injuries to an adult victim of a sexual assault offense or domestic abuse if the victim objects to the release of any identifying information to law enforcement. (T.C.A. § 38-1-101)

Note: This exception shall not apply if the injuries are considered life threatening or if the victim is being treated for injuries inflicted by strangulation, knife, pistol or other deadly weapon.

* PLEASE REFER TO THE T.C.A FOR THE FULL TEXT OF EACH STATUTE.*



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I. SEXUAL ASSAULT VICTIM DEFINITION

A sexual assault victim is a person who has been subjected to criminal sexual conduct, including the spouse of the defendant. (T.C.A. § 39-13-501(8))

II. SEXUAL ASSAULT OFFENSES IN TENNESSEE

A. Sexual Battery Classifications

- **Sexual Battery (T.C.A. § 39-13-505)**
Sexual Battery is the unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances: force or coercion; sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent; the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or the sexual contact is accomplished by fraud. (Class E felony)
 - “Sexual contact” includes the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification. (T.C.A. § 39-13-501(6))
- **Aggravated Sexual Battery (T.C.A. § 39-13-504)**
Aggravated Sexual Battery is unlawful sexual contact with any of the following circumstances: force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon; the defendant causes bodily injury to the victim; the defendant is aided or abetted by one or more other persons and force or coercion is used to accomplish the act or the defendant knows or has reason to know that

the victim is mentally defective, mentally incapacitated or physically helpless; or the victim is less than 13 years of age. (Class B felony)

- **Sexual Battery by an Authority Figure (T.C.A. § 39-13-527)**
Sexual Battery by an Authority Figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances: the victim was, at the time of the offense, at least 13 years of age but less than 18; or the victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and, the defendant used a position of trust or supervisory or disciplinary power, i.e., legal, professional, occupational, parental, or custodial. (Class C felony)
- **Sexual Contact by an Authority Figure (T.C.A. §39-13-509)**
It is an offense for a defendant to engage in unlawful sexual contact with a minor when the minor is less than 18 years of age, the defendant is at least 4 year older than the victim; and the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant’s legal, professional, or occupational status and used the position of trust or power to accomplish the sexual contact; or the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. As used in this section, “sexual contact” means the defendant intentionally touches or kisses the minor’s lips with the defendant’s lips if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification (Class A misdemeanor)

B. Rape Classifications

- **Rape (T.C.A. § 39-13-503)**
Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances: force or coercion; without the consent of the victim and the defendant knows

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or should have known that the victim did not consent; the defendant knows that the victim is mentally defective, mentally incapacitated or physically helpless; or the sexual penetration is accomplished by fraud. (Class B felony)

- “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s, the defendant’s, or any other person’s body, but emission of semen is not required. (T.C.A. § 39-13-501 (7))

- **Aggravated Rape (T.C.A. § 39-13-502)**
Aggravated Rape is rape with the following elements: there is a weapon or an article is used or fashioned in a way to lead the victim to reasonably believe it is a weapon and force or coercion is used; there is bodily injury to the victim; or the defendant is aided and abetted by one or more other persons, and force or coercion is used to accomplish the act or the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless. (Class A felony)

C. Child Rape Classifications

- **Rape of a Child (T.C.A. § 39-13-522)**
Rape of a Child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than 3 years of age, but less than 13 years of age. (Class A felony with Range II or III sentencing)
- **Aggravated Rape of a Child (T.C.A. § 39-13-531)**
Aggravated Rape of a Child is when the victim is less than 3 years of age. (Class A with Range III sentencing)

D. Statutory Rape Classifications (T.C.A. § 39-13-506)

Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim. There are three classifications of the offense based on the age of the victim and the age of the defendant:

- **Mitigated Statutory Rape (T.C.A. § 39-13-506(a))**
Victim is at least 15 but less than 18 years of age and the defendant is at least 4 but not more than 5 years older than the victim. (Class E felony)
- **Statutory Rape (T.C.A. § 39-13-506 (b)(1) and (2))**
Victim is at least 13 but less than 15 years of age and the defendant is at least 4 years but less than 10 years older than the victim; or victim is at least 15 but less than 18 years of age and the defendant is more than 5 but less

than 10 years older than the victim. (Class E felony)

- **Aggravated Statutory Rape (T.C.A. § 39-13-506(c))**
Victim is at least 13 but less than 18 years of age and the defendant is at least 10 years older than the victim. (Class D felony)
- **Statutory Rape by an Authority Figure (T.C.A. § 39-13-532)**
Statutory Rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least 13 but less than 18 years of age; the defendant is at least 4 years older than the victim; and the defendant used a position of trust or supervisory or disciplinary power, i.e., legal, professional, occupational, parental, or custodial. No person who is found guilty of or pleads guilty to the offense shall be eligible for probation or judicial diversion. (Class B felony)

E. Other Sexual Assault Offenses

- **Sexual Contact with Probationer or Parolee (T.C.A. § 39-16-409)**
It is an offense for a probation and parole officer to engage in sexual contact or sexual penetration, whether consensual or non-consensual, with a probationer or parolee who is under the supervision of the department of correction; provided, that the probation or parole officer knows or reasonably should know the person is a probationer or parolee. (Class E felony)
- **Sexual Contact with Inmates (T.C.A. § 39-16-408)**
It is an offense for a law enforcement officer, correctional employee, vendor or volunteer to engage in sexual contact or sexual penetration with a prisoner or inmate who is in custody at a penal institution, either on or off the grounds. (Class E felony)
- **Tennessee Human Trafficking Act (T.C.A. § 39-13-309)**
A person commits the offense of trafficking a person for a commercial sex act who knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person’s provision of a commercial sex act; or who recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act. (Class A or B felony)

III. HIV TESTING & SEXUAL OFFENSES (T.C.A. § 39-13-521)

- When a person is arrested for aggravated

rape, rape, aggravated child rape, rape of a child, statutory rape, mitigated statutory rape, aggravated statutory rape, and statutory rape by an authority figure, the person must undergo HIV testing immediately or not later than forty-eight hours after indictment or the presentment of the information. This testing must occur with or without the request of the victim.

- The following persons may have access to the test results: the victim, the parent or guardian of a minor or incapacitated victim, department of health, department of correction, the person tested, the district attorney general’s office, and the physician of the victim and the person tested.

IV. EVIDENCE & SEXUALLY ORIENTED CRIMES

A. Prohibition Against Requiring Polygraph Exams (T.C.A. § 38-3-123)

No law enforcement officer shall require any victim of a sexual offense, as defined in T.C.A. § 40-39-202, or violent sexual offense, as defined in T.C.A. § 40-39-202, to submit to a polygraph examination or any other test designed to detect deception or verify the truth of statements through instrumentation or by means of a mechanical device, as a condition of the officer proceeding with the investigation of the offense.

B. Sexual Assault Victim’s Prior Consensual Sexual Activity--Rape Shield Law (Rule 412 of the Tennessee Rules of Evidence)

Rule 412 sets forth the admissibility of evidence of a victim’s past sexual behavior. “Sexual behavior” means sexual activity of the alleged victim other than the sexual act at issue in the case. Reputation or opinion evidence of the sexual behavior of an alleged victim of such offense and evidence of specific instances of conduct are inadmissible unless admitted in accordance with the procedures set out in Rule 412 and required by the Tennessee or United States Constitution.

Specific instances of the victim’s behavior are inadmissible unless:

- The evidence is offered by the defendant on the issue of credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim’s sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or
- If the sexual behavior was with the accused, on the issue of consent, or if the sexual behavior was

with persons other than the accused, the evidence is offered: (1) to rebut or explain scientific or medical evidence, or to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or (2) to prove consent if the evidence is of a pattern of sexual behavior so distinctive and so closely resembling the defendant’s version of the alleged encounter with the victim that it tends to prove that the victim consented to the act charged or behaved in such a manner as to lead the defendant reasonably to believe that the victim consented.

The court shall use the following procedure to determine admissibility:

- A hearing must be held in chambers or otherwise out of the hearing of the public and the jury to determine whether the proffered evidence is admissible. At the Rule 412 hearing the court must determine whether the standard required by this statute is met and whether the probative value of the proof outweighs any unfair prejudice resulting from the introduction of the proof. The record of this hearing is sealed except for any testimony that may be used for impeachment.

Note: A prior false accusation of rape does not constitute sexual behavior as contemplated under Rule 412.

C. Admissibility of Video Recordings of Child Testimony (T.C.A. § 24-7-123)

Authorizes the submission into evidence of a video recording of an interview of a child under the age of 13 by a forensic interviewer containing a statement made by the child describing any act of sexual contact with the child if:

- The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination;
- The video recording is shown to the reasonable satisfaction of the court to be trustworthy;
- The interview was conducted by a qualified forensic interviewer (employed by a child advocacy center, bachelor’s degree in related field, 3 years experience, meets training and supervision requirements, no criminal history, and participated in peer review);

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